United States Department of Labor
Employees' Compensation Appeals Board

SUBHASHINI R. PRASAD, Appellant	)	
and	)	**Docket No. 03-1086**
	)	**Issued: February 11, 2005**
DEPARTMENT OF VETERANS AFFAIRS, LOCH RAVEN REHABILITATION EXTENDED CARE CENTER, Baltimore, MD, Employer	)	

Appearances:
Stephen J. Dunn, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On March 24, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated and finalized February 19, 2003, which denied her claim for a December 15, 2001 left wrist injury on the grounds that it did not occur in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has established that she sustained an injury on December 15, 2001 in the performance of duty as alleged. On appeal, appellant asserts that the injury she sustained at a Christmas party, away from her duty station and on her day off, was work related because the event was held at an employing establishment facility and sponsored by an Equal Employment Opportunity (EEO) committee to promote its Special Emphasis Program (SEP).

FACTUAL HISTORY

On December 17, 2001 appellant, then a 58-year-old nursing supervisor, filed a traumatic injury claim alleging that she fractured her left wrist at 3:15 p.m. on Saturday, December 15, 2001 when she slipped and fell while leaving a luncheon at the employing establishment's Fort Howard Facility. Herminia G. Nudo, appellant's supervisor, confirmed appellant's account of this incident.[1] The employing establishment contended that appellant was not in the performance of duty when attending a luncheon at the Fort Howard Facility. Employing establishment timekeeping records show that appellant's regular work shift is 12:00 a.m. to 8:00 a.m. with scheduled days off on Saturday, December 15 and Sunday, December 16, 2001. Appellant stopped work as of December 17, 2001.

Appellant submitted information about the nature of the December 15, 2001 incident. In a November 1, 2001 email, Deborah Reick, an employing establishment EEO assistant, noted that the Fort Howard EEO Hispanic Heritage Committee wished to sponsor a "Christmas Get-Together" for employing establishment EEO personnel and their families to "have fun together, get to know each other, and to make Christmas a special event for all of us." Ms. Reick sent follow-up emails regarding refreshments and participating in a gift exchange. In a December 14, 2001 email, Ms. Reick described the event as a "pot luck Christmas party," including a tree, a Santa and a large cake shaped like a Christmas tree. Ms. Nudo responded on December 14, 2001 that she and appellant would attend. In a December 17, 2001 email, Ms. Nudo advised Ms. Reick of appellant's injury and that she would need confirmation that the party was an official event. Ms. Reick replied that it was not an official event but a Christmas party for those who chose to get together for some fun, outside of work. The Hispanic Committee was given permission to use the theater for the party.

In December 28, 2001 and January 23, 2002 letters, the employing establishment controverted appellant's claim, asserting that the December 15, 2001 event was an unofficial, voluntary party from which the employing establishment derived no benefit. Appellant was not required, coerced or persuaded to attend. The employing establishment acknowledged that the Fort Howard Facility allowed the use of the theater for the party.

By decision dated February 4, 2002, the Office denied appellant's claim on the grounds that she was not in the performance of duty at the time she fractured her left wrist. The Office found that the December 15, 2001 party was a voluntary social event held on appellant's day off and not on the premises of her duty station.

Appellant requested an oral hearing, held November 29, 2002. At the hearing, counsel asserted that the December 15, 2001 event was a work-related EEO function related to an EEO "SEP" which had previously sponsored presentation and events discussing how to reduce friction between supervisees of different ethnic groups. Appellant stated that there was no presentation at the party. She asserted that Ms. Nudo encouraged everybody to attend but that she did not receive compensatory time for attending and was not on duty that night. Appellant submitted

[1] Appellant submitted medical records diagnosing a fracture of the left distal radius and ulnar styloid that occurred in a slip and fall on December 15, 2001. She received treatment through September 11, 2002 at which time surgery and a bone graft were recommended.

additional evidence, including an April 1997 employing establishment memorandum which noted the existence of the EEO-SEP program concerning women, minorities and individuals with disabilities.

In a December 27, 2001 report, Ms. Nudo stated that, while leaving the EEO holiday party at Fort Howard on December 15, 2001, she witnessed appellant slip and fall, breaking her left wrist.

In a January 17, 2002 letter, appellant asserted that the December 15, 2001 event was a Veterans Affairs Maryland Health Care System (VAMHCS)-EEO sponsored holiday party, held at the Fort Howard Facility.

In a November 26, 2002 affidavit, Ms. Nudo explained that the employing establishment facilities at Fort Howard, Loch Raven and Perry Point each participated in the EEO-SEP. Ms. Nudo was program manager in December 2001 "representing Asian Americans at the Loch Raven facility. [Appellant] was also a member of this group." She asserted that the VAMHCS EEO office sponsored the December 15, 2001 to facilitate an exchange of ideas on further promotion of the SEP program.

In January 9, 2003 comments on the hearing transcript, the employing establishment reiterated that the December 15, 2001 event was a voluntary Christmas party with no work-related educational presentation and not an officially sponsored event.[2]

By decision dated and finalized February 19, 2003, the Office hearing representative affirmed the February 4, 2002 decision, finding that appellant was not in the performance of duty at the time she was injured on December 15, 2001. The hearing representative found that appellant was not on duty or on the employing establishment's premises at the time of the party, was not compensated for attending, that she was not required to attend the event and that the employing establishment did not receive a tangible benefit from her attendance.

LEGAL PRECEDENT

Section 8102(a) of the Federal Employees' Compensation Act provides for payment of compensation for disability or death of an employee resulting from personal injury "sustained while in the performance of his duty."[3] This phrase is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws; namely, "arising out of and in the course of employment."[4] Whereas "arising out of the employment" addresses the causal

[2] In a January 17, 2003 letter, appellant's attorney objected to the Office's consideration of the employing establishment's January 9, 2003 submission as it was not made within 20 days of December 10, 2002. In the February 19, 2003 decision, the hearing representative found this contention without merit as all evidence submitted prior to issuance of the decision could be considered and the 20-day deadline was only an administrative convenience.

[3] 5 U.S.C. § 8102(a)

[4] *See Bernard E. Blum*, 1 ECAB 1 (1947).

connection between the employment and the injury, "arising in the course of employment" pertains to work connection as to time, place and activity.[5]

In determining whether an injury arises in the performance of duty, Larson's treatise on workers' compensation law states:

> "Recreational or social activities are within the course of employment when:
>
> (1) They occur on the premises during a lunch or recreational period as a regular incident of the employment; or
>
> (2) The employer, by expressly or impliedly requiring participation, or by making the activity part of the services of an employee, brings the activity within the orbit of the employment; or
>
> (3) The employer derives substantial direct benefit from the activity beyond the intangible value of improvement in employee health and morale that is common to all kinds of recreation and social life."[6]

These are three independent links, by which recreational or social activities can be tied to employment and, if one is found, the absence of the others is not fatal.[7] Accordingly, when an employee is injured during a recreational or social activity, he or she must meet one of the above-noted criteria in order to establish that the injury arose in the performance of duty.

ANALYSIS

Appellant contends that the Christmas party was an officially sponsored event within the performance of her duties as it was sponsored by an EEO committee to promote its SEP program. The evidence of record, however, fails to satisfy any of the above-noted criteria.

The claimed injury is not covered under the first criterion for recreational and social activities as the injury did not occur on the employing establishment's premises. The Board notes that the December 15, 2001 injury occurred on the premises of a Department of Veterans Affairs Facility at Fort Howard, not at the Loch Raven Rehabilitation Center where appellant is assigned to work. While the Board has construed an "industrial premises" may encompass

[5] *See Robert J. Eglinton*, 40 ECAB 195 (1988); *Clayton Varner*, 37 ECAB 248 (1985); *Thelma B. Barenkamp (Joseph L. Barenkamp)*, 5 ECAB 228 (1952).

[6] A. Larson, *The Law of Workers' Compensation* § 22.01 (2000); *Steven F. Jacobs*, 55 ECAB ___ (Docket No. 03-2251, issued January 14, 2004).

[7] *Archie L. Ransey*, 40 ECAB 1251 (1989); *Clifford G. Smith*, 32 ECAB 1702 (1981); *Stephen H. Greenleigh*, 23 ECAB 53 (1971); *see* Larson, *supra* note 6 at §§ 22.10, 22.30.

multiple buildings of an employing establishment facility,[8] the Board has held that the industrial premises rule does not apply if a claimant is not injured during regular working hours. In *Barbara Roy*,[9] the employee was injured at a voluntary social event sponsored by the employing establishment but occurring after work hours. The Board found that she was not injured in the performance of duty. As applied to this case, employing establishment records confirm that appellant was not on duty the afternoon of Saturday, December 15, 2001. As appellant was not on duty at the time she was injured, the premises rule does not apply. Rather, she was injured on her scheduled day off and her injury is not covered under the first criterion as it did not occur on the premises as a regular incident of employment.

The second criterion is whether the employing establishment required appellant to participate in the luncheon or otherwise made the activity part of her services as an employee. Appellant argued that the employing establishment encouraged employees to attend the party. However, the employing establishment asserted that appellant was not engaged in any official capacity and that the employees attended the party on a voluntary basis. The record supports that appellant was not required to participate in the Christmas luncheon. Ms. Reick, an employing establishment EEO assistant, stated in a December 17, 2001 email that the December 15, 2001 event was not an official event but simply a party for people to get together, outside of work.

Appellant contends, however, that the December 15, 2001 party was an official event occurring within the performance of duty as it was hosted at the employing establishment's Fort Howard Facility. The employing establishment acknowledged that the Hispanic Heritage EEO Committee was given permission to use the Fort Howard theater to host the party. When the degree of employer involvement descends from compulsion to mere sponsorship or encouragement, the question of performance of duty becomes closer and it is necessary to conduct further inquiry.[10] This inquiry focuses on the issue of whether the employing establishment sponsored the event, whether attendance was voluntary and whether the employing establishment financed the event. The record in this case establishes that, while the employing establishment facility at Fort Howard allowed the EEO committee to use its facility to host the party, the attendees brought their own food, beverages and gifts. The Board has held that, if attendance at an event is completely voluntary and there is no direct, substantial benefit to the employer, this outweighs the employer's sponsorship of the event when determining whether or not an activity occurred in the course of employment.[11]

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[8] *See John F. Castro* (Docket No. 03-1653, issued May 14, 2004) (the Board held that as appellant's assigned duties involved traveling the internal roads of a military reservation, the "employing establishment" comprised the entire installation). *Compare Idalaine L. Hollins-Williamson*, 55 ECAB ___ (Docket No. 04-1147, issued August 23, 2004) (appellant, a postal employee, traveled to a different postal facility to seek employment there. During this errand, she was allegedly exposed to anthrax. The Board held that appellant's visit to the contaminated facility and alleged anthrax contamination was not in the performance of duty as there was no evidence that the errand was related to fulfilling her employment duties).

[9] 42 ECAB 960 (1991).

[10] Larson, *supra* note 6 at § 22.25.

[11] *Barbara Roy*, 42 ECAB 960 (1991); *Nancy S. Hardin*, 38 ECAB 285 (1986).

The Board finds that, although the December 15, 2001 luncheon involved personnel from the EEO program, the record supports that the activity was not one which appellant was compelled to attend. Participation in the social activity was neither part of appellant's job nor was it an activity for which she would be evaluated. It was a voluntary activity. Appellant attended the party on her day off and was not given compensatory time for attending. Further, there is no substantiation that the party was anything but a social event. Ms. Reick's emails from November 1 to December 14, 2001 describe the planning of a purely social event for EEO personnel and their families to "have fun together, get to know each other, and to make Christmas a special event for all of us." Consequently, appellant has failed to demonstrate that the employing establishment either expressly or implicitly required her to attend the December 15, 2001 luncheon. Other than the hosting of the event, the record does not indicate that the employing establishment financed or sponsored it.[12] Under these circumstances, appellant has failed to demonstrate that the employing establishment required her to participate in the December 15, 2001 luncheon or otherwise made the activity part of her services as an employee.

Appellant has also failed to satisfy the third criterion, that the employing establishment derived substantial direct benefit from the December 15, 2001 luncheon beyond the intangible value of improvement in employee social life and morale. No evidence of record suggests that the social activity in this case was in any way related to the employing establishment's business.[13] In December 28, 2001 and January 23, 2002 letters, the employing establishment stated that it derived no benefit from appellant's attendance at the December 15, 2001 party. The employing establishment reiterated in a January 9, 2003 letter that the activities at the December 15, 2001 party were not related to appellant's assigned duties. Although her supervisor contended that the December 15, 2001 party was held to exchange ideas about promoting an EEO program, there is no evidence to substantiate this allegation. The emails from Ms. Reick describe a Christmas party for EEO employees and their families, not an EEO ideas exchange program. Consequently, the evidence of record does not establish that the employing establishment derived substantial direct benefit from the activity beyond the intangible value of improvement in health and morale that is common to all kinds of recreation and social life.[14]

CONCLUSION

The Board finds that appellant has not established that she sustained an injury in the performance of duty on December 15, 2001 as alleged. The February 19, 2003 decision of the Office denying appellant's claim was proper under the law and the facts of this case.

[12] The fact that no deduction is made from an employee's salary for the time he or she engages in a certain activity does not, by itself, constitute that activity as being incidental to employment; *see Julianne Harrison*, 8 ECAB 440 (1955), *petition for recon. denied*, 8 ECAB 573 (1956). *See also Anna M. Adams*, 51 ECAB 149, 154 (1999).

[13] *Anna M. Adams*, *supra* note 12 at 149.

[14] Larson, *supra* note 6 at § 22.30.

ORDER

IT IS HEREBY ORDERED THAT the February 19, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 11, 2005
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member